

STATE OF INDIANA )  
 ) SS:  
COUNTY OF MARION )

IN THE MARION CIRCUIT COURT

AVC NO. 04 - 031

IN RE: BERKELEY PREMIUM )  
 NUTRACEUTICALS, INC., )  
 )  
 Respondent. )

496030409M1003166

FILED

79 SEP 03 2004

*David Anne Snodgrass*  
CLERK OF THE  
MARION CIRCUIT COURT

**ASSURANCE OF VOLUNTARY COMPLIANCE**

The State of Indiana, by Attorney General Steve Carter and Deputy Attorney General Mary Ann Wehmuehler, and the Respondent, Berkeley Premium Nutraceuticals, Inc., enter into an Assurance of Voluntary Compliance (Assurance) pursuant to Indiana Code §24-5-0.5-7.

Any violation of the terms of this Assurance constitutes prima facie evidence of a deceptive act. This Assurance is entered into without any adjudication of any issue of fact or law and upon consent of the parties.

The parties agree:

1. Respondent is an Ohio for-profit corporation engaged in the sale of various nutraceutical products, including but not limited to the products known as: "Avilimil", "Enzyte", and "Altovis". Respondent's principal place of business is located at 1661 Waycross Road, Cincinnati, Ohio. Respondent regularly transacts business with Indiana consumers.
2. The terms of this Assurance apply to and are binding upon Respondent, its employees, agents, representatives, successors, and assigns.
3. Respondent acknowledges the jurisdiction of the Consumer Protection Division of the Office of the Attorney General to investigate matters hereinafter

described, pursuant to the authority of Ind. Code §4-6-9-4 and Ind. Code §24-5-0.5-1 *et seq.*

4. Respondent, in soliciting the sale of or advertising its nutraceutical products will comply in all respects with Federal Trade Commission Rule 16 C.F.R. 251 concerning the use of the word “Free” and similar representations, including but not limited to: when making “free” or similar offers all terms and conditions and obligations upon which receipt and retention of the “free” item are contingent must be disclosed clearly and conspicuously at the outset of the offer so as to leave no reasonable probability that the terms of the offer might be misunderstood.

5. Respondent will refrain from making and shall not make, cause to be made, or permit to be made, expressly or by implication, any representation, orally or in writing, that a “free 30-day sample cycle” of Respondent’s nutraceutical products can be delivered to a consumer without further obligation, when the Respondent knows that the consumer’s acceptance of the “free sample” is conditioned upon the consumer’s enrollment in a managed care or continuity program that obligates the consumer to purchase additional nutraceutical products unless he or she takes affirmative action to cancel membership in the program.

6. Respondent will refrain from making and shall not make, cause to be made, or permit to be made, expressly or by implication, any representation, orally or in writing, that a specific price advantage exists, specifically that a consumer’s acceptance of Respondent’s “free sample” offer is free, when in fact Respondent knows or should reasonably know that the offer is not free because acceptance of the “free” offer ” is conditioned upon the consumer’s enrollment in a managed care or continuity program

that obligates the consumer to purchase additional nutraceutical products unless he or she takes affirmative action to cancel membership in the program.

7. Respondent will refrain from making and shall not make, cause to be made, or permit to be made, expressly or by implication, any representation, orally or in writing, that acceptance of Respondent's "free 30-day sample cycle" involves or does not involve further rights, remedies or obligations, when the Respondent knows or should reasonably know that acceptance of the "free" offer " is conditioned upon the consumer's enrollment in a managed care or continuity program that obligates the consumer to purchase additional nutraceutical products, unless he or she takes affirmative action to cancel membership in the program.

8. Upon execution of this Assurance, Respondent shall pay costs in the amount of Three Hundred Dollars (\$300.00) to the Office of the Attorney General.

9. Respondent shall not represent that the Office of the Attorney General approves or endorses Respondent's past or future business practices, or that execution of this Assurance constitutes such approval or endorsement.

10. Respondent shall fully cooperate with the Office of the Attorney General in the resolution of any future written complaints the Consumer Protection Division receives.

11. The Office of the Attorney General shall file this Assurance with the Circuit Court of Marion County. The Court's approval of this Assurance shall not act as a bar to any private right of action.

DATED this 27<sup>th</sup> day of August, 2004.

STATE OF INDIANA

STEVE CARTER  
Attorney General of Indiana

By: Mary Ann Wehmüller

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RESPONDENT

Berkeley Premium Nutraceuticals, Inc.

Paul Kellogg  
(signature)

PAUL J. KELLOGG  
(printed name)

V.P. / GENERAL COUNSEL  
(title)

APPROVED this 3rd day of Sept, 2004.

Theodore M Sosin  
Judge, Marion Circuit Court